

Terms & Conditions of Sale

Orrcon Standard Terms and Conditions of Sale Effective May 2006

Orrcon Operations Pty Ltd
ABN 92 094 103 090
www.orrconsteel.com.au

T 1300 677 266
F 1300 665 858
E info@orrcon.com.au

These Standard Terms and Conditions apply to the supply of Goods by Orrcon to the Customer.

1. Purchase Orders and Contract

- 1.1 A Purchase Order is accepted by Orrcon when the customer receives from Orrcon an Order Acknowledgement. If the customer does not receive an Order Acknowledgement, then acceptance occurs at the earlier of either verbal acknowledgement or by delivery.
- 1.2 When a Purchase Order is accepted, the Contract will be documented by the following in order of precedence:
 - Any specific terms agreed in writing;
 - The Order Acknowledgement; and
 - Orrcon Standard Terms and Conditions of Sale.
- 1.3 Terms and conditions submitted by the Customer with a Purchase Order do not form part of the contract unless expressly agreed in writing by Orrcon. Orrcon Standard Terms and Conditions of Sale will prevail over the Customer's terms and conditions.
- 1.4 Variations of the Contract are only effective if agreed in writing by Orrcon.
- 1.5 Any previous dealings between Orrcon and the Customer will not have any effect on the contract.
- 1.6 The Contract contains everything Orrcon has agreed with the Customer in relation to the Goods supplied under the Contract. Neither party may rely on an earlier contract, or upon anything else said or done by the other party before this contract was entered into.
- 1.7 The Customer must provide written notice to Orrcon of changes in trading address, legal entity, structure of management or control within 7 days of the change coming into effect.
- 1.8 Orrcon may at its discretion, as a condition of acceptance of a purchase order require the Customer or persons or entities associated with the Customer to do any of the following:
 - Provide a cash deposit or full payment in advance of delivery of the Goods.
 - Satisfy credit approval requirements.
 - Provide personal guarantees as to payment.
 - Provide bank guarantees as to payment.
 - Provide a charge over all or some of the Customer's assets.

2. Price

- 2.1 The Price is the total amount payable on the Order Acknowledgement.
- 2.2 Notwithstanding any provision in the Contract, Orrcon may increase the Price of the Goods after an Order Acknowledgement is provided and prior to delivery if the price increase results from an increase in either:
 - The price of inputs which comprise part of the Goods; or
 - The Goods and Services Tax or any transactional tax.
- 2.3 The Price includes any applicable Goods and Services Tax, at the rate then prevailing, imposed on supplies made by Orrcon to the Customer.

3. Delivery

- 3.1 All quoted delivery or consignment dates are estimates only. Orrcon is not obliged to meet such dates and will not be liable to the Customer by reason of delays caused for any reason.
- 3.2 If Orrcon delivers the Goods to the Customer's nominated delivery address and Orrcon incurs costs because the Customer is not available or not willing to accept delivery, Orrcon may claim those costs from the Customer.
- 3.3 Orrcon may deliver the Goods by instalments (where in Orrcon's opinion this is reasonable to do so) and issue interim invoices to the Customer.
- 3.4 Without limiting any other provision in this document, failure by the Customer to pay for any instalment, or any other amount when due, will entitle Orrcon to withhold or delay delivery of any remaining Goods ordered.
- 3.5 If delay in delivery is caused by a circumstance of force majeure (refer clauses 10.1 and 10.2), Orrcon may (at its option and without limiting its other rights and remedies) arrange suitable storage of the Goods, whether at its premises or elsewhere and the Customer must pay or reimburse all costs and expenses of storage, insurance, demurrage, handling and other charges associated with such storage.

4. Return of Goods and credits

- 4.1 The Customer is deemed to have accepted the Goods unless it makes a claim in accordance with clauses 4.2 and 4.3.
- 4.2 The Customer may claim the right to reject any Goods which are wrongly supplied or oversupplied, or which are not in accordance with any express representations or the Orrcon Standard Terms and Conditions of Sale, by notifying Orrcon of the claim and providing full particulars of the claim in writing within 7 days of receipt of those Goods. Orrcon may dispute any such claim.
- 4.3 The Customer is liable to pay the cost of returning the Goods subject to a claim

made under clause 4.2 unless all of the following are met:

- Orrcon has agreed in writing to their return
- The Customer has complied with clause 4.2;
- The Customer has done all things necessary to permit Orrcon to examine the Goods to its satisfaction within 7 days of complying with clause 4.2; and
- The Goods are in the same condition as when they were delivered.

5. Payment

- 5.1 The Price must be paid:
 - In full with the purchase order; or
 - In full within 30 days of the end of the month of invoice, only if Orrcon has given written credit approval to the Customer and the credit limit approved has not been exceeded; and time is of the essence.
- 5.2 If paid by cheque, the Price is paid on the date the cheque clears.
- 5.3 The Customer must not set off any money alleged to be owing by Orrcon against money due by the Customer to Orrcon.
- 5.4 If payment of an invoice is made by credit card, an additional credit card payment fee of 3% of the Price applies.

6. Title and Risk

- 6.1 Legal and equitable title only passes from Orrcon to the Customer when the Customer has paid all monies owing by the Customer to Orrcon. Until then, Orrcon retains title to the Goods and the Customer is a bailee of the Goods. The Customer must comply with all of the following conditions:
 - Keep the Goods in its possession and control.
 - Keep the Goods in good repair and condition, excluding fair wear and tear.
 - Keep the Goods stored separately and marked so that the Goods are clearly and easily identifiable as Orrcon's property and inform Orrcon of the location of the Goods, if requested.
 - Not sell, assign or let the Goods or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.
 - Maintain and allow Orrcon to inspect records which do any of the following:
 - Identify any unpaid Goods owned by Orrcon.
 - Detail third parties to whom the Customer sells or otherwise disposes of the unpaid Goods.
 - Detail payments made by such parties for the unpaid Goods.
- 6.2 If the Customer does not pay for any Goods on the due date for payment, the Customer authorises Orrcon, its employees and agents to enter the Customer's premises (and any premises under the control of the Customer or an agent of the Customer if the Goods are located on those premises) and use reasonable force to retake possession of the Goods without liability for trespass or damage. Orrcon may at its option keep or resell Goods retaken from the Customer.
- 6.3 If the Customer sells the Goods before payment in full to Orrcon, the Customer holds the proceeds on trust for Orrcon in respect of those Goods, and must keep such proceeds in a separate account until the liability to Orrcon is discharged and must immediately pay that amount to Orrcon.
- 6.4 If the Customer uses the Goods in a manufacturing or construction process of its own or some third party, the Customer must hold that part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for Orrcon. The Customer must keep such proceeds in a separate account until the liability to Orrcon is discharged. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to Orrcon in respect of the Goods in question at the time of receipt of such proceeds. The Customer must not assign the right to any such proceeds or enter into any other arrangement that would result in the Customer not receiving those proceeds.
- 6.5 Despite the retention of these rights, Orrcon may recover the price of the Goods from the Customer.
- 6.6 The risk in Goods supplied passes to the Customer on delivery of the Goods. The Customer is responsible for any charge or expense incurred in relation to the Goods.

7. Insurance

- 7.1 The Customer must keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to the Customer until the time the title in the Goods passes to the Customer. The Customer holds the proceeds of that insurance on trust for Orrcon up to the amount it owes Orrcon in respect of those Goods, and must keep such proceeds in a separate account until the liability to Orrcon is discharged and must immediately pay that amount to Orrcon.

8. Default



we'll see it through



- 8.1 If the Customer has not paid the entire Price by the due date for payment:
- 8.1.1 Orrcon may take steps to recover all outstanding monies, including engaging a mercantile agency or instituting legal proceedings. The Customer is liable for any costs of taking steps to recover the account including the costs of a mercantile agency, court costs and legal costs.
- 8.1.2 Interest is payable on any amount outstanding after the due date for payment at the rate of 1.5% per month. Additionally, interest will apply to recovery costs at the rate of 1.5% per month from the date the costs are incurred.
- 8.1.3 Orrcon may elect to suspend from time to time some or all its obligations under this Contract or any other agreement with the Customer, including offering further credit, until:
- Payment in full is received by Orrcon; or
 - Orrcon enters the Customer's premises and repossess the Goods to which the outstanding payments relate and keep or sell those Goods in accordance with clause 6.2. The non performance of obligations suspended by Orrcon is not a breach of the agreement. The Customer remains bound by its obligations to Orrcon.
- 8.2 If the Customer fails to take delivery of the Goods and this continues for 60 days or more, Orrcon may resell those Goods. Any proceeds of the resale of the Goods will be applied as follows:
- 8.2.1 If the Customer has a Orrcon Credit Account, Orrcon will credit it with the resale price after deducting a restocking fee of 15% of the original sale price of the Goods; or
- 8.2.2 The Customer is entitled to, or must pay, as relevant, the difference between the original sale price and the resale price after deduction of a restocking fee of 15% of the original sale price of the Goods.
- 8.3 Orrcon may exercise all rights resulting from the failure to pay money at any later time despite the supply of Goods by Orrcon after it becomes aware of a failure by the Customer to pay money. The right to terminate may be exercised concurrently with the suspension of obligations by Orrcon.
- 8.4 Orrcon may by written notice to the Customer immediately end the agreement formed under this document in any of the following circumstances:
- The Customer fails to perform any of its obligations under this document including failure to pay by the due date.
 - The Customer dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business.
 - Anything happens that reasonably indicates that there is a significant risk that the Customer is or will become unable to pay debts as they fall due. This includes execution or distress being levied against any income or assets of the Customer; a meeting of the Customer's creditors being called or held; a step being taken to make the Customer bankrupt; and the Customer entering into any type of arrangement with, or assignment for the benefit of, all or any class of its creditors, or being subject to a deed of company arrangement.
 - A step is taken to have a receiver, receiver and manager, provisional liquidator, liquidator or administrator appointed to the Customer or any of its assets.
- 8.5 If the agreement is ended because of the Customer's default and the Customer owes Orrcon money, the money becomes payable immediately to Orrcon.
- 9. Intellectual Property**
- 9.1 If the Customer provides any information to Orrcon, the Customer warrants that it holds any required intellectual property rights to that information. In the event of legal action against Orrcon for breach of intellectual property rights relating to use of information provided by the Customer, the Customer indemnifies Orrcon for any costs it may incur.
- 10. Force Majeure**
- 10.1 If Orrcon's ability to perform its obligations under this document is adversely affected by war, strike, trade dispute, damage to plant or machinery, shortage of any material or labour, or any cause beyond Orrcon's control, Orrcon may, if it chooses, end the agreement or suspend it for up to 3 months by giving the Customer written notice. Orrcon will not be liable for any loss, damage or liability which the Customer incurs.
- 10.2 The Customer must accept delivery of the Goods notwithstanding any delay in delivery caused by any of the events specified in clause
- 11. Limitation of Liability**
- 11.1 To the extent permitted by law, liability is excluded for defective Goods manufactured and/or sold by Orrcon where that liability arises from faulty design, materials, workmanship and fair wear and tear. This sub-clause applies except to the extent that Orrcon expressly agrees in writing that contrary terms apply.
- 11.2 Orrcon makes no representation as to the fitness of Goods supplied by it for any purpose, other than a purpose which has been notified to Orrcon in writing, prior to the date of any agreement, by the Customer, and confirmed in writing by Orrcon to be applicable.
- 11.3 In respect of Goods which are not ordinarily acquired for personal, domestic or household use or consumption, the liability of Orrcon for a breach of any condition or warranty implied by law is limited at Orrcon's option to the repair of the Goods, or supply of a replacement, or payment of the cost of replacing the Goods or of acquiring equivalent Goods or payment of the cost of having the Goods repaired.
- 11.4 Except as implied by statute, all other liability, including for physical or financial consequential loss or damage and whether arising from negligence or misuse of product in any other way is excluded.
- 12. Waiver**
- 12.1 The fact that Orrcon fails to do, or delays in doing, something it is entitled to do under this document, does not amount to a waiver of its right to do it. Any waiver must be agreed in writing by Orrcon.
- 13. Severance**
- 13.1 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Contract, but the rest of this document is not affected.
- 14. Assignment**
- 14.1 Neither party may assign any right under this document without the other party's written consent.
- 15. Applicable Law**
- 15.1 This document is governed by and must be interpreted in accordance with the laws of Queensland. The Customer unconditionally submits to the non exclusive jurisdiction of the courts of Queensland.
- 16. Grades of Materials**
- 16.1 Orrcon will use all reasonable efforts to:
- Supply Goods having a material grade consistent with any material grade specified in the Order Acknowledgement; and
 - Supply material grades in accordance with nominated Australian and international standards and specifications if the Goods are described as complying with those standards or specifications in Orrcon's quotations, Order Acknowledgements Product Catalogue, data sheets, internet sites or price lists.
- 16.2 Where Orrcon supplies Goods which are not manufactured by it, the Goods are subject to the chemical, mechanical and physical properties of the original manufacturer. Orrcon does not offer any warranty over such Goods, except to the extent that they are subject to the warranty of the original manufacturer.
- 16.3 If the Customer disputes Orrcon's assessment of the grade of material, Orrcon is not liable for any discrepancy unless the Customer complies with clause 4.
- 17. Measures and Shortages**
- 17.1 Any statement by Orrcon about the weight, length, quantity or other characteristics of Goods is approximate and Orrcon may, in compliance with the Contract, supply such Goods on a nominal, actual or calculated basis. Where the Goods are supplied on a calculated basis, Orrcon will perform any calculation of weight, length, quantity or other characteristics in accordance with, and within nominated tolerances specified in, any applicable Australian and international standards and specifications.
- 17.2 If the Customer disputes Orrcon's assessment of the weight, length, quantity or other characteristics of the Goods or shortages of Goods, Orrcon is not liable for any discrepancy unless the Customer complies with clause 4.
- 18. Definitions**
- "Contract" means the contract formed between Orrcon and the Customer by a Purchase Order accepted in accordance with clause 1.1.
- "Customer" means the person placing the order with Orrcon.
- "Goods and Services Tax" means tax payable on taxable supplies under A New Tax System (Goods & Services Tax) Act 1999 (Cth)
- "Goods" means the goods provided by Orrcon and includes any component part of the goods.
- "Order Acknowledgement" means a written document titled Order Acknowledgement referred to in clause 1.1.
- "Orrcon" means Orrcon Operations Pty Ltd.
- "Purchase Order" means a written or oral request by the Customer to purchase